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In re Application of
PLOUG et al.
U.S. Application No.: 09/743,329
PCT No.: PCT/DK99/00377
International Filing Date: 01 July 1999
Priority Date: 01 July 1998
Attorney's Docket No.: PLOUG 1
For: PEPTIDE ANTAGONISTS OF THE HUMAN
UROKINASE RECEPTOR AND METHOD FOR
SELECTING THEM

: DECISION ON PETITION
:
: TO REVIVE UNDER
:
: 37 CFR 1.137(a)
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:
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This decision is in response to applicants' "Petition To Revive Under 37 C.F.R. §1.137(a)" filed on 09 January 2001. Applicants have paid the required petition fee.

BACKGROUND

On 01 July 1999, applicants filed international application PCT/DK99/00377 which claimed a priority date of 01 July 1998 and which designated the United States. On 13 January 2000, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB).

On 25 January 2000, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 01 January 2001. As Monday 01 January 2001 was a federal holiday, the deadline for payment was extended to midnight 02 January 2001.

On 09 January 2001, applicants filed the "Petition To Revive Under 37 CFR 1.137(a)" considered herein.

DISCUSSION

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Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied by: (1) A proper response, unless already

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filed; (2) The petition fee as set forth in §1.17(l); (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) A terminal disclaimer (if necessary). Applicants have satisfied items (1) and (2) above; item (4) is not applicable. Regarding item (2) applicants included a payment of \$130.00. The large entity petition fee per §1.17(l) is \$110.00, therefore, \$20.00 will be credited to Deposit Account No. 02-4035.

Concerning item (3), applicants have not met the burden of proof to show that the abandonment was unavoidable. In the present case, applicants waited until the last hour of the last day to submit the national stage application; delayed filing of these papers and those of numerous other applications to accommodate one set of delayed papers; failed to impress upon the employee entrusted with submitting the materials the importance of having the client's work completed before turning to personal affairs; and/or failed to ascertain whether the employee assigned courier duties knew the proper route to the USPTO. In addition, the courier in question chose to attend a social function prior to filing the required papers with the USPTO rather than vice versa. These circumstances do not satisfy the exacting standard applied when determining whether the cause of abandonment was unavoidable.

Because applicants have failed to satisfy all the requirements for a grantable petition under 37 CFR 1.137(a), this application remains abandoned with respect to the United States.

CONCLUSION

The petition to revive under 37 CFR 1.137(a) is **DISMISSED without prejudice.**

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)."

As an alternative, applicants are advised to consider filing a petition to revive under 37 CFR 1.137(b) for unintentional, rather than unavoidable, delay.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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Application No. 09/743,329

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